

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Kathryn Donnelly,

Petitioner-Appellant,

v.

Polk County Board of Review,

Respondent-Appellee.

ORDER

**Docket No. 09-77-1505
Parcel No. 291/00065-492-125**

On March 1, 2011, the above-captioned appeal came on for consideration before the Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2) and Iowa Administrative Code rules 701-71.21(1) et al. The Appellant, Kathryn Donnelly, was self-represented and requested the appeal proceed without a hearing. The Polk County Board of Review designated Assistant County Attorneys Ralph Marasco Jr. and David Hibbard as its legal representatives. The Appeal Board having reviewed the entire record, and being fully advised, finds:

Findings of Fact

Donnelly is the owner of a residentially classified, single-family residence located at 1417 NW 137th Court, Clive, Iowa. According to the property record card, the subject property is a one-and-half-story attached town house built in 1995, has 1540 square feet of total living area and a 1060 square-foot basement with 500 square feet of “average plus” quality finish. It has a two-car attached garage. The property also has 80 square feet of deck area and one fireplace. The site is 0.053 square feet.

The January 1, 2009, total assessment of Donnelly’s property was \$214,000 allocated as follows: \$35,400 in land value and \$178,600 in improvement value.

Donnelly protested to the Polk County Board of Review regarding the 2009 assessment for this parcel. The protest was based on the following ground: that there has been a downward change in the value since the last assessment under Iowa Code sections 441.37(1) and 441.35. In a re-assessment year, a challenge based on downward change in value is akin to a market value claim under Iowa code section 441.37(1)(b). *See Dedham Co-op. Ass'n v. Carroll County Bd. of Review*, 2006 WL 1750300 (Iowa Ct. App. 2006). Donnelly did not request a specific amount of relief, but noted that she had purchased the property in April 2009 for \$133,350 and would supply an appraisal to the Board of Review.

Donnelly did not request a hearing at the Board of Review, but did submit an appraisal of the subject property with an effective date of April 4, 2009, which has a value opinion of \$150,000.

The Board of Review reduced the subject property to a total January 1, 2009, assessment of \$198,500, allocated as follows: \$35,400 in land value and \$163,100 in improvement value.

Donnelly petitioned this Board on the same ground and contends the correct assessed value of her property is \$155,000, represented as \$35,400 in land value and \$119,600 in improvement value.

Donnelly relied on the appraisal she previously submitted to the Board of Review. No new evidence was presented to this Board. The appraisal was completed by William Weller of Weller Appraisal Services, West Des Moines, Iowa, and was prepared for mortgage financing purposes. Weller considered six properties consisting of four closed sales, a pending sale, and an active listing. These six properties had a pre-adjusted range of \$172,000 to \$211,000. After making adjustments for differences, the range of value indicated by the six properties is \$148,820 to \$207,720. We note this is an unusually large range of value and no explanation was provided by Weller as to why it is so large. Weller used one-story, one-and-a-half story, and two story homes; however, he does not make any adjustments for difference in style, nor does he explain why no adjustment was necessary. Weller makes an across the board adjustment for condition, stating that "the condition (of the subject) is not

one of lesser than average but is in need of cleaning and minor paint repairs.” Additionally, some of Weller’s adjustments seem to be mechanical in nature, not reflective of market actions, or lack explanation. For instance, one of his sales has three fireplaces and one of his sales has two fireplaces. He makes an adjustment for the three fireplaces compared to the subject yet makes no adjustments to the sale with two fireplaces compared to the subject and does not explain why the sales are treated differently for the same element of comparison.

Weller’s final range of adjusted value has a 28% variance from the low to high when considering all six properties and a 27% variance when only considering the closed sales (\$148,802 to \$204,420). He did not provide any meaningful analysis of how or why he selected \$150,000 from this wide range of value. He states in his final reconciliation that “most weight is given to the lower end because of the condition explained in the condition comments.” However, in addition to his previous comment that the condition of the subject is “not one of lesser than average” he further indicates in the condition section of his report that the subject property “is on an average or better maintenance program.” As such, his selection of the lower end of the range does not seem supported. Additionally, three of the four closed sales in his analysis have an adjusted value of greater than \$183,000. Due to our concerns with credibility and methodology, we give Weller’s appraisal little consideration.

The Board of Review supplied an appraisal completed by Dennis Loll of Des Moines Real Estate Services. Loll’s appraisal is based on a January 1, 2009, assessment date, although he inspected the property in February of 2011. Loll indicates the condition of the subject property in his report reflects the condition of the property as of January 1, 2009, based upon conversations with the current owner. The property was purchased by the appellant in April of 2009 as a bank-sold property. Loll identifies some dated décor (mirrored walls and carpet) as well as some deferred maintenance such as vinyl flooring in need of repair or replacement, interior walls in need of paint, and older appliances. Loll rates the subject as “average” condition in his market analysis.

Loll included five sold properties in his analysis. All five are located in the subject development or an immediately adjacent and competing development. Similar to Weller, Loll considers one-story, one-and-a-half story, and two-story properties. However, unlike Weller, Loll makes a design adjustment to the one-story homes indicating they are superior due to having all the living area on one level. While Loll makes condition adjustments to four of the five sales, he does provide at least one sale that in his opinion offers similar condition to the subject property as of the January 1, 2009, assessment date.

Two of Loll's sales occurred after the January 1, 2009, assessment date. Both of these properties sold in September of 2009 and Loll makes upward adjustments to reflect a slight decline in the market from the January 1 to September 2009 time-frame for this property type and area. Loll's adjusted range of value is \$165,000 to \$171,000. He selects a value opinion at the lower end of this range, \$167,000, to further reflect the subject's condition at time of sale. Loll further notes there are other bank-owned sales in the area; however, they were not included as they were not arm's length transactions.

Of the two appraisals presented, we find Loll's to be more convincing as he provides clear analysis explaining his thought process and support for his opinion.

We find sufficient evidence has been presented to support a claim of over-assessment.

Conclusions of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the

property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).


In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). Donnelly offered an appraisal completed by William Weller and the Polk County Board of Review offered an appraisal completed by Dennis Loll. We find Loll's appraisal has more credibility and provides clear rationale supporting his conclusions and final value opinion.

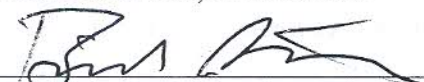
The evidence does support the claim that the property is assessed for more than the value authorized by law.

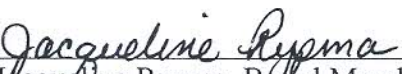
THE APPEAL BOARD ORDERS that Kathryn Donnelly's property assessment, located at 1417 NW 137th Ct, Clive, Iowa be modified to a total value of \$167,000; representing \$35,400 in land value and \$131,600 to the improvements as of January 1, 2009.

The Secretary of the State of Iowa Property Assessment Appeal Board shall mail a copy of this Order to the Polk County Auditor and all tax records, assessment books and other records pertaining to the assessments referenced herein on the subject parcels shall be corrected accordingly.

Dated this 20 day of April, 2011


Karen Oberman, Board Chair


Richard Stradley, Board Member


Jacqueline Rypma, Board Member

Cc:

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AUDITOR

Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>4-20</u> , 2011	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	